

ORIGINAL

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

CITY OF DES PLAINES, an Illinois Municipal Corporation,

Petitioner,

vs.

UNION PACIFIC RAILROAD COMPANY and WISCONSIN  
CENTRAL LTD., and ILLINOIS DEPARTMENT OF  
TRANSPORTATION,

Respondents.

In the matter of the petition of the City of Des Plaines for an order of the  
Illinois Commerce Commission to require the respondents to pay their  
allocable share of the costs of a major alteration of an above grade crossing  
in the City of Des Plaines, Cook County, Illinois.

RECEIVED  
JAN 28 2004

Illinois Commerce Commission  
RAIL SAFETY SECTION

T03-0102

RESPONSE OF WISCONSIN CENTRAL LTD. TO THE PETITION

NOW COMES WISCONSIN CENTRAL LTD. ("WCL"), through its attorney,  
Michael J. Barron, Jr. with its Response to the Petition in this docket and states as follows  
(WCL is answering the Petition as if it was named as a respondent instead of Wisconsin  
Central Transportation Corporation):

1. WCL lacks sufficient information to form a basis for admitting or denying  
the allegations contained in Paragraph 1 of the Petition.
2. WCL lacks sufficient information to form a basis for admitting or denying  
the allegations contained in Paragraph 2 of the Petition.
3. WCL admits the allegations contained in Paragraph 3 of the Petition.
4. WCL lacks sufficient information to form a basis for admitting or denying  
the allegations contained in Paragraph 4 of the Petition.

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JAN 28 2004

5. WCL denies the allegations contained in Paragraph 5 of the Petition.

6. WCL lacks sufficient information to form a basis for admitting or denying the allegations contained in Paragraph 6 of the Petition.

7. WCL admits that it operates rail traffic through the City of Des Plaines. WCL lacks sufficient information to form a basis for admitting or denying the remaining allegations contained in Paragraph 7 of the Petition.

8. WCL admits that 625 ILCS § 5/18c-7401(1) is properly stated in Paragraph 8 of the Petition.

9. WCL admits that Exhibit A to the Petition is a true and correct copy of an Illinois Commerce Commission Order entered in T01-0039 on February 20, 2002.

10. WCL admits that 625 ILCS § 5/18c-7401(3) states in pertinent part:  
Railroad Crossings.

\* \* \*

The Commission shall also have the power, after a hearing, to require major alteration of or to abolish any crossing, heretofore or hereafter established, when in its opinion, the public safety requires such alteration or abolition. . .

\* \* \*

The Commission shall also have power by its order to require the reconstruction, minor alteration, minor relocation or improvement of any crossing (including the necessary highway approaches thereto) of any railroad across any highway or public road, pedestrian bridge, or pedestrian subway, whenever the Commission finds after a hearing or without a hearing as otherwise provided in this paragraph that such reconstruction, alteration, relocation or improvement is necessary to preserve or promote the safety or convenience of the public or of the employees or passengers of such rail carrier or carriers. By its original order or supplemental orders in such case, the Commission may direct such reconstruction, alteration, relocation or improvement to be made in such manner and upon such terms and conditions as may be reasonable and necessary and may apportion the cost of such reconstruction, alteration, relocation or improvement and the subsequent maintenance thereof, having regard to the benefits, if any, accruing to the railroad or any party in interest, between the rail carrier or carriers and public utilities affected, or between such carrier or carriers and public utilities and the

State, county municipality or other public authority in interest. The cost to be so apportioned shall include the cost of changes or alterations in the equipment of public utilities affected as well as the cost of the relocation, diversion or establishment of any public highway, made necessary by such reconstruction, alteration, relocation or improvement of said crossing. A hearing shall not be required in those instances when the Commission enters an order confirming a written stipulation in which the Commission, the public highway authority or other public authority in interest, the rail carrier or carriers affected, and in instances involving the use of the Grade Crossing Protection Fund, the Illinois Department of Transportation, agree on the reconstruction, alteration, relocation, or improvement and the subsequent maintenance thereof and the division of costs of such changes of any grade crossing (including the necessary highway approaches thereto) of any railroad across any highway, pedestrian bridge, or pedestrian subway.

11. WCL lacks sufficient information to form a basis for admitting or denying the allegations contained in Paragraph 11 of the Petition.

12. WCL lacks sufficient information to form a basis for admitting or denying the allegations contained in Paragraph 12 of the Petition.

13. WCL lacks sufficient information to form a basis for admitting or denying the allegations contained in Paragraph 13 of the Petition.

14. WCL lacks sufficient information to form a basis for admitting or denying the allegations contained in Paragraph 14 of the Petition.

15. WCL lacks sufficient information to form a basis for admitting or denying the allegations contained in Paragraph 15 of the Petition.

16. WCL denies the allegations contained in Paragraph 16 of the Petition.

17. WCL denies the allegations contained in Paragraph 17 of the Petition.

18. WCL denies the allegations contained in Paragraph 18 of the Petition.

## AFFIRMATIVE DEFENSE

1. Any jurisdiction the Commission may have to hear and decide this proceeding has been preempted by the Interstate Commerce Commission Termination Act at 49 U.S.C. § 10501(b), by the Federal Railroad Safety Act at 49 U.S.C. 20106, and by other Federal law.

2. If any new structure is ordered pursuant to this Docket, the allocation of costs among the parties has already been set forth in previous Commission orders and agreements.

WHEREFORE, Wisconsin Central Ltd. respectfully requests the Illinois Commerce Commission enter an order:

1. Denying the Petition; and
2. Granting further relief it deems just and equitable.

Dated: January 27, 2004

Respectfully submitted,

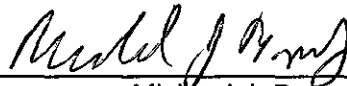
WISCONSIN CENTRAL LTD.

By: 

Michael J. Barron, Jr.  
Counsel for Wisconsin Central Ltd.  
CN  
455 North Cityfront Plaza Dr., 20<sup>th</sup> floor  
Chicago, IL 60611-5317  
Phone: (312) 755-7954  
Fax: (312) 755-7669  
ARDC #6228809

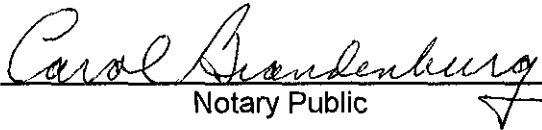
VERIFICATION

Michael J. Barron, Jr., being duly sworn, deposes and says that he is Counsel for Wisconsin Central Ltd., that he has read the foregoing Response of Wisconsin Central Ltd., and that the contents thereof are true and correct to the best of his knowledge and belief.



Michael J. Barron, Jr.

Subscribed and sworn to  
before me this 27<sup>th</sup> day of  
January, 2004.

  
Notary Public

My Commission Expires:



STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

CITY OF DES PLAINES, an Illinois Municipal Corporation,

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in the City of Des Plaines, Cook County, Illinois.

NOTICE OF FILING

To: Mr. Mack H. Shumate, Jr.  
Union Pacific Railroad Company  
101 North Wacker Drive, #1920  
Chicago, IL 60606

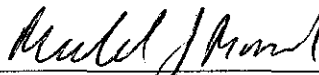
Ms. Stacey C. Hollo  
Counsel  
Illinois Department of Transportation  
2300 S. Dirksen Parkway, Room 300  
Springfield, IL 62764

Mr. Paul Keller  
Ancel, Clink, Diamond, Bush, DiCianni & Rolek P.C.  
140 South Dearborn Street, 6<sup>th</sup> floor  
Chicago, IL 60603

PLEASE TAKE NOTICE that on January 27, 2004, I have sent for filing with the Illinois  
Commerce Commission, 527 East Capitol Avenue, Springfield, IL 62701, the attached Response of  
Wisconsin Central Ltd. to the Petition in the above-captioned docket.

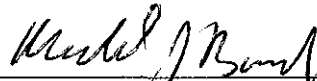
WISCONSIN CENTRAL LTD.

By

  
Michael J. Barron, Jr.  
Counsel for Wisconsin Central Ltd.  
CN  
455 North Cityfront Plaza Drive  
Chicago, IL 60611-5317  
Tel: (312) 755-7954  
Fax: (312) 755-7669  
ARDC 6228809

CERTIFICATE OF SERVICE

I, MICHAEL J. BARRON, JR., an attorney, certify that I served the foregoing Response upon those made party to this proceeding by enclosing copies of the foregoing in envelopes addressed to the parties as set forth below, postage prepaid, and depositing the envelopes in the United States mail at 455 North Cityfront Plaza Drive, Chicago, IL on the 27th day of January, 2004.



Michael J. Barron, Jr.

Mr. Mack H. Shumate, Jr.  
Union Pacific Railroad Company  
101 North Wacker Drive, #1920  
Chicago, IL 60606

Ms. Stacey C. Hollo  
Counsel  
Illinois Department of Transportation  
2300 S. Dirksen Parkway, Room 300  
Springfield, IL 62764

Mr. Paul Keller  
Ancel, Clink, Diamond, Bush, DiCianni & Rolek P.C.  
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